

## REMARKS

Reconsideration in view of the foregoing amendments and the following remarks, and entry of this paper, is respectfully requested. Moreover, the applicant has reviewed the Final Office Action of February 25, 2007, and submits that this paper is responsive to all points raised therein.

### I. Status of the Claims

Claims 1, 2 and 5-44 are pending in the instant Patent Application. Claims 3 and 4 were cancelled previously.

Claims 1, 21, 24, 27, 30, 34, 36 and 38 have been amended. Support for these amendments is, for example, in drawing Figs. 1-3. The amendments are discussed below.

New claims 40-44 were added. Support for these claims, for example, in drawing Figs. 1-3. These claims are discussed below.

### II. Rejections Under 35 USC 102(b)

Claims 1-11, 16, 19-22, 24, 25 and 33-39 were rejected under 35 USC 102(b) as anticipated by Clary (U.S. Patent No. 3,271,787) (Clary '787).

Claims 1, 21 and 24 have been further amended to recite a tile cap including a substantially planar body with at least one edge extending from the body, the at least one edge is configured for being adjusted for the body to lie over the surface of an existing tile and for conforming with a corresponding edge of the existing tile. This is in addition to the recitations of oppositely disposed first and second surfaces with the least one edge formed of the second surface converging toward the first surface, and an adhesive in communication with the second surface.

Claims 34-36 and 38 have been amended similarly to the amendments for claims 1, 21 and 24.

As a result of the claimed structure, for example, the tile caps may have their at least one edge trimmed, so as to place the cap body over the existing tile surface such that the adhesive contacts the tile cap body and the surface of the existing tile cap for bonding, while the at least one edge of the tile cap conforms to the corresponding edge or shoulder of the existing tile.

Clary '787 is directed to swimming pool coping blocks that are attached to rough concrete pool decking. These coping blocks are not configured for fitting over the surface of an existing tile, and are not shaped so that the edges of the coping block will conform to the edges or shoulders of the existing tile. Moreover, these edges of the Clary '787 coping blocks are not configured for or contemplated for being adjusted, as they merely abut with vertically oriented tile and cover over horizontally oriented tile. Accordingly, these coping blocks do not cap existing tile in any form, like the claimed subject matter.

For the reasons above, Clary '787 fails to show, teach or suggest any structure or methods like those recited in claims 1, 21, 24, 34-36 and 38. Accordingly, claims 1, 21, 24, 34-36 and 38 are not anticipated by Clary '787 under 35 USC 102(b).

Since claims 1, 21, 24, 36 and 38 are not anticipated by Clary '787 under 35 USC 102(b), claims 2-11, 16, 19 and 20, 22, 25 and 33, 37 and 39, respectively dependent thereon, are also not anticipated by Clary '787 for the same reasons. These claims further distinguish over the cited art.

### **III. Rejections Under 35 USC 103(a)**

Claims 12-15, 23 and 26 were rejected under 35 USC 103(a) as unpatentable over Clary '787 in view of Zinbarg (U.S. Patent No. 5,946,869) (Zinbarg '869).

These claims are all dependent on claims 1, 21 and 24, which as further amended, have been discussed above. That discussion is applicable here.

Clary '787 has been discussed above. That discussion is also applicable here.

As discussed above, Clary '787 fails to meet all of the limitations of independent claims 1, 21 and 24.

Zinbarg '869, cited to teach double sided form tape adhesives and other adhesives, fails to cure the deficiencies of Clary '787.

Accordingly, Clary '787 in combination with Zinbarg '869 remains structurally deficient and fails to meet the recitations of claims 1, 21 and 24. As such, this combination of references fails to render claims 1, 21 and 24 obvious under 35 USC 103(a).

Since claims 1, 21 and 24 are nonobvious over Clary '787 in view Zinbarg '869, claims 12-15, 23 and 26, respectively dependent thereon, are also allowable over this cited art for the same reasons. These claims further distinguish over this cited art.

Claims 17, 18, 27, 30 were rejected under 35 USC 103(a) as unpatentable over Clary '787 in view of Stoneburner (U.S. Patent 3,359,574) (Stoneburner '574).

Claims 17 and 18 are dependent on claim 1. This claim has been discussed above and that discussion is applicable here.

Claims 27 and 30 are method claims, amended similarly to claim 1, to recite a tile cap configured for fitting over the surface of an existing tile.

Clary '787 has been discussed above. That discussion is also applicable here.

As discussed above, Clary '787 discloses coping blocks, that are not configured for fitting over the surface of an existing tile, or being adjusted to fit over the existing tile at a set elevation to accommodate the bonding adhesive and such that at least one edge of the tile cap will conform to the edge of the existing tile. Accordingly, Clary' 787 fails to meet all of the limitations of independent claims 1, 27 and 30.

Stoneburner '574, cited to teach bactericidal materials, fails to cure the deficiencies of Clary '787.

Accordingly, Clary '787 in combination with Stoneburner '574 remains structurally deficient and fails to meet the recitations of claims 1, 27 and 30. As such, this combination of references fails to render claims 1, 27 and 30 obvious under 35 USC 103(a).

Since claim 1 is nonobvious over Clary '787 in view Stoneburner '574, claims 17 and 18, dependent thereon, are also allowable over this cited art for the same reasons. These claims further distinguish over this cited art.

Claims 28, 29, 31 and 32 were rejected under 35 USC 103(a) as unpatentable over Clary '787 in view of Stoneburner '574 and Zinbarg '869.

Claims 28 and 29 are dependent on claim 27, while claims 31 and 32 are dependent on claim 30. Both claim 27 and claim 20 have been discussed above. These discussions are applicable here.

Clary '787, Stoneburner '574 and Zinbarg '869 have been discussed above. These discussions are applicable here.

As discussed above, both Stoneburner '574 and Zinbarg '869 fail to cure the deficiencies associated with Clary '787, as neither of these references disclose methods for capping tile. Accordingly, this combination falls short of claims 27 and 30, and does not render these claims obvious under 35 USC 103(a).

Since claims 27 and 30 are nonobvious over Clary '787 in view Stoneburner '574 and Zinbarg '869, claims 28 and 29, and 31 and 32, respectively dependent thereon, are also allowable over this cited art for the same reasons. These claims further distinguish over this cited art.

#### **IV. New Claims 40-44**

New Claims 40-44 have been added. These claims round out the claim scope. These claims define additional method steps and are allowable over all art of record for the same reasons as the base claims, claims 21, 24, 30, 36 and 38, from which they depend.

#### **V. Conclusion**

The applicant also notes the Examiner's citation of Brach (U.S. Patent No. 3,515,611), Witt (U.S. Patent No. 5,271,200), Botzen (U.S. Patent No. 6,338,229), Jauregui (U.S. Patent No. 6,905,751), and Clemmer (U.S. Patent No. 7,263,811) to complete the record.

Should the Examiner have any question or comment as to the form, content or entry of this paper, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

Entry of this paper and allowance of all pending claims, 1, 2 and 5-44, is respectfully requested.

The applicant believes that except for fees for four dependent claims, no further fees are currently due. However, if any fee is deemed necessary in connection with this Response, please charge Deposit Account No. 12-0600.

Respectfully submitted,  
LATHROP & GAGE L.C.

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